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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* NICOLAS VAZQUEZ, JEFFERY L. KODOSKY, RAM  
KUDUKOLI, KEVIN L. SCHULTZ, DINESH NAIR, and  
CHRISTOPHE CALTAGIRONE

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Appeal 2009-000766  
Application 09/595,003  
Technology Center 2100

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Before JOSEPH L. DIXON, LANCE LEONARD BARRY, and  
JEAN R. HOMERE, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

The Appellants appeal under 35 U.S.C. § 134(a) from a Final rejection of claims 1-7, 9-37, 39-59, 61-74, and 76-90. Claims 8, 38, 60, and 75 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

## I. STATEMENT OF THE CASE

### *The Invention*

The invention at issue on appeal relates to a method and system for automatically generating a graphical program to implement a prototype in order to run the program independently of the prototyping environment (Spec. 7).

### *The Illustrative Claim*

Claim 1, an illustrative claim, reads as follows:

1. A method of creating a graphical program to perform an algorithm, the method comprising:

recording one or more functions in response to user input, wherein the one or more functions specify the algorithm; and

automatically generating the graphical program in response to the recorded one or more functions, wherein the graphical program comprises a plurality of interconnected nodes which visually indicate functionality of the graphical program, wherein the graphical program implements the algorithm;

wherein said automatically generating the graphical program comprises automatically including the nodes in the graphical program, wherein said automatically including the nodes in the graphical program is performed without direct user input selecting the nodes.

### *The References*

The Examiner relies on the following references as evidence:

Yamada	US 4,831,580	May 16, 1989
Shi	US 5,623,659	Apr. 22, 1997
Morris	US 5,862,372	Jan, 19, 1999
Oka	EP 0510514 A1	Oct. 28, 1992

### *The Rejections*

The following rejections are before us for review:

Claims 1-7, 9-16, 21-37, 39-43, 45-59, 61-65, 67-74, and 76-90 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Morris, Oka, and Yamada.

Claims 17-20, 44, and 66 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Morris, Oka, Shi, and Yamada.

## II. ISSUES

Has the Examiner erred in finding that the combination of Morris, Oka, and Yamada teaches or fairly suggests “said automatically generating the graphical program comprises automatically including the

nodes in the graphical program, wherein said automatically including the nodes in the graphical program is performed without direct user input selecting the nodes,” as recited in independent claim 1?

### III. PRINCIPLES OF LAW

#### *Obviousness*

“Obviousness is a question of law based on underlying findings of fact.” *In re Kubin*, 561 F.3d 1351, 1355 (Fed. Cir. 2009). The underlying factual inquiries are: (1) the scope and content of the prior art, (2) the differences between the prior art and the claims at issue, (3) the level of ordinary skill in the pertinent art, and (4) secondary considerations of nonobviousness. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007) (citation omitted).

### IV. FINDINGS OF FACT

The following findings of fact (FFs) are supported by a preponderance of the evidence.

#### *Oka*

1. Oka discloses a method for automatically drawing a flowchart representing the processing outline of the data processing contents:

A program list, however, is too technical and hence difficult for general users to understand. On the other hand, drawing of a flow chart takes a lot of time and labor even for a system engineer, demanding a very laborious task.

It is an object of the present invention to automatically draw a flow chart as a graphic representation of data processing contents in accordance with definition information defining the data processing contents, thereby allowing easy understanding of the data processing contents.

(col. 1, ll. 15-25).

*Yamada*

2. Yamada discloses a program generator automatically generates a flowchart of a series of sequence control processes with user's inputs. An executable program is automatically generated corresponding to the flowchart by a program means with a certain programming language (Abst., col. 2, ll. 1-54).

## V. ANALYSIS

The Appellants have the opportunity on appeal to the Board of Patent Appeals and Interferences (BPAI) to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (citing *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

The Examiner sets forth a detailed explanation of a reasoned conclusion of unpatentability in the Examiner's Answer. Therefore, we look to the Appellants' Brief to show error in the proffered reasoned conclusion. *Id.*

*The Common Feature in Claims*

Independent claim 1, recites, *inter alia*, “said automatically generating the graphical program comprises automatically including the nodes in the graphical program, wherein said automatically including the nodes in the graphical program is performed without direct user input selecting the nodes.” Independent claims 31, 53, 71, 81, 90, although having different wording, contain the similar limitations.

*35 U.S.C. § 103(a) rejections*

With respect to independent claim 1, the Appellants contend that independent claim 1 recites “one of more features not taught or suggested in Morris, Oka, and Yamada” (App. 5). According to the Appellants, Morris merely teaches “manual creation of graphical code, NOT automatic creation.” (*Id.* 6); Oka merely teaches “automatically generating a *flowchart* that graphically represents data processing content, *not* a graphical program” (*Id.* 7); and Yamada only teaches “generating a program from a flowchart, the programs of Yamada are nowhere described as graphical programs, and in fact, are clearly text-based programs.” (*Id.* 8).

The Examiner states the combination of Morris (manually creating a graphical program), Oka and Yamada discloses the argued limitation because “[t]he disclosure of Oka provides motivation and suggests to a user the automatic generation of a program including automatic generation of nodes and connections of these nodes,” (Ans. 15), and that “[t]he disclosure

of Yamada discloses that flowcharts are executable and can generate executable program data. The flowchart which is clearly an executable program itself represents a graphical program with nodes and connections between these nodes” (*Id.* 16).

We disagree with the Examiner’s reading of references. “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). Here, both the Appellants and the Examiner agree that Morris only teaches manually creating a graphical program by dragging and dropping nodes.

However, we find that the paragraph of the Oka reference relied upon by the Examiner only discusses of automatically drawing a flowchart representing the outline of data processing content, and the flowchart is only a graphical representation of data processing content, not graphical programs (FF 1).

We next look to the teachings of Yamada. Contrary to the Examiner’s assertion, the flowchart in Yamada is not an executable program itself, and furthermore, is also not a graphical program. Only the program (which is not a graphical program) generated according to the flowchart is executable (FF 2). We, thus, conclude that the feature of automatically creating a graphical program and automatically including nodes in the graphical program without direct user input selecting the nodes is not taught in Morris, Oka, and Yamada, taken singly or in combination. We, therefore, find the Examiner’s position is untenable.



Because we agree with at least one of the Appellants' contentions, we find that the Examiner has not made a requisite showing of obviousness as required to teach or fairly suggest the invention as recited in claim 1 by the combined teachings of Morris, Oka, and Yamada.

The independent claims 31, 53, 71, 81, and 90 contain the similar limitations to those found in independent claim 1. The Appellants present similar arguments as set forth with respect to independent claim 1 in response to the rejections of independent claims 31, 53, 71, 81, and 90 (App. Br. 5, 23-24).

As we found above in our discussion with respect to independent claim 1, we similarly find that the Appellants have demonstrated error in the Examiner's conclusion for obviousness of the subject matter of independent claims 31, 53, 71, 81 and 90. The rejection of dependent claims 2-7, 9-30, 32-37, 39-52, 54-59, 61-70, 72-74, 76-80, and 82-89 also contains the same deficiency. Hence, the Appellants' argument persuades us that the Examiner erred in rejecting claims 1-7, 9-37, 39-59, 61-74, and 76-90.

We, therefore, cannot sustain the rejection of claims 1-7, 9-37, 39-59, 61-74, and 76-90 under 35 U.S.C. § 103.

## VI. CONCLUSION

We conclude that the Appellants have shown that the Examiner erred by failing in identifying that the combination of Morris, Oka, and Yamada teaches and fairly suggests "said automatically generating the graphical

program comprises automatically including the nodes in the graphical program, wherein said automatically including the nodes in the graphical program is performed without direct user input selecting the nodes,” as recited in independent claim 1.

#### VII. ORDER

We reverse the obviousness rejections of claims 1-7, 9-37, 39-59, 61-74, and 76-90 under 35 U.S.C. § 103(a).

#### REVERSED

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